

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NOS. 2021-89-E, 2021-90-E**

IN RE:	)	
	)	
Duke Energy Carolinas, LLC's 2021	)	<b>SOUTH CAROLINA OFFICE OF  REGULATORY STAFF'S  MOTION FOR LEAVE TO PRESENT  ITS WITNESSES AT THE HEARING  SCHEDULED FOR SEPTEMBER 16-  17, 2021, AND FOR EXPEDITED  CONSIDERATION</b>
Avoided Cost Proceeding Pursuant	)	
to S.C. Code Ann. Section 58-41-20(A)	)	
	)	
Duke Energy Progress, LLC's 2021	)	
Avoided Cost Proceeding Pursuant	)	
to S.C. Code Ann. Section 58-41-20(A)	)	
	)	

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Pursuant to 10 S.C. Code Ann. Regs. 103-838 and other applicable law, the South Carolina Office of Regulatory Staff ("ORS") respectfully moves for an order of the Public Service Commission of South Carolina ("Commission") granting ORS leave to present the direct testimony of its witnesses in the above-captioned dockets at the hearing scheduled for September 16-17, 2021. ORS further requests that the Commission consider this request on an expedited basis. In support of this motion, ORS would respectfully show as follows:

1. On or about March 20, 2021, the Commission Staff established the above-captioned dockets pursuant to S.C. Code Ann. § 58-41-20(A) for the purpose of updating Duke Energy Carolinas, LLC's ("DEC") and Duke Energy Progress, LLC's ("DEP") (collectively, "Duke Energy") standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and other terms and conditions necessary to implement the requirements of S.C. Code Ann. § 58-41-20(A).

2. Pursuant to Order No. 2021-257, dated April 14, 2021, the Commission approved a procedural schedule, which, among other things, required Duke Energy to submit its application in these proceedings by April 22, 2021, established deadlines for prefiled testimony, and set a date for the hearing to begin on August 2, 2021.

3. In accordance with S.C. Code Ann. § 58-41-20(I), the Commission issued a Request for Proposal (“RFP”) on or about April 19, 2021, for the purpose of soliciting responses from qualified third-party consultants or experts to assist the Commission in carrying out its duties under S.C. Code Ann. § 58-41-20, including the evaluation of avoided cost rates, methodologies, terms, calculations, and conditions.

4. On May 17, 2021, and pursuant to the Commission’s adopted prefiled testimony schedule, Duke Energy prefiled the direct testimony and exhibits of its witnesses in the above-captioned matters, which, among other things, set forth DEC and DEP’s proposed avoided cost methodologies and changes to their avoided cost tariffs, standard offer, and other related documents.

5. In response to the RFP, the Commission received one offer to provide consulting or expert services in this matter; however, this offer subsequently was withdrawn by the responding entity. Accordingly, on or about May 24, 2021, the Commission reissued a new RFP for such services to be provided in connection with the above-captioned dockets.

6. Pursuant to the Commission’s prefiled testimony schedule, ORS prefiled the direct testimony and exhibits of its witnesses on June 11, 2021, and therein recommended certain adjustments be made to the DEC avoided cost methodology.

7. Upon information and belief, the Commission did not receive responses to its May 24, 2021, RFP and, on June 16, 2021, issued an additional RFP for the provision of third-party consulting or expert services in the above-captioned dockets.

8. On or about July 14, 2021, the Commission notified the parties of record that it received three proposals in response to its RFP, including one from London Economics International, LLC (“London Economics”).

9. On July 23, 2021, Duke Energy filed a Stipulation of Agreement (“Stipulation”) between Duke Energy, ORS, Carolinas Clean Energy Business Association, the Southern Alliance for Clean Energy, and the South Carolina Coastal Conservation League. In support of the Stipulation, Duke Energy also filed stipulation testimony and exhibits of its witnesses. Counsel for the South Carolina Department of Consumer Affairs (“DCA”) advised that the DCA had no objection to the Stipulation.

10. Also, on July 23, 2021, Pelzer Hydro Company, LLC, Aquenergy Systems, LLC, and Northbrook Carolina Hydro, LLC requested leave to withdraw their intervention in this proceeding, which request was granted by the Commission. Subsequently, Johnson Development Associations, Inc. also notified the Commission on July 27, 2021, it did not intend to submit testimony, evidence, or argument in these matters.

11. Accordingly, all of the parties of record have agreed to, or indicated they would not object to, the Stipulation and the proposed resolution of the disputed matters pending in this proceeding.

12. During its regularly scheduled business meeting held on July 28, 2021, and five calendar days prior to the scheduled August 2, 2021, hearing, the Commission voted to retain the consulting services of London Economics for the purpose of assisting the Commission in

evaluating the avoided cost methodologies and related issues under consideration in the above-captioned docket. The Commission also agreed to establish a schedule and deadlines by which London Economics would be required to review the issues in this matter and produce its report for review and consideration by the Commission and the parties.

13. On July 29, 2021, the Commission held a special business meeting during which it approved the following schedule regarding London Economics' participation in this matter:

August 23, 2021	Deadline for London Economics to file its report
September 10, 2021	Deadline for Parties of Record to conduct discovery, including depositions, of London Economics regarding its report
September 16-17, 2021	Reconvene the hearing in the above-captioned matters so as to allow the parties to cross-examine London Economics and to permit the Commission to ask questions of London Economics

14. Based on these facts and the procedures currently approved by the Commission, the parties of record therefore will be required to proceed with the hearing on the merits in this proceeding, which is scheduled to begin on August 2, 2021, prior to receiving any information regarding the findings or recommendations of London Economics on the important matters pending in these dockets.

15. ORS respectfully submits that requiring it to present its case in chief prior to being notified of any findings or recommendations of London Economics would violate ORS's due process rights.

16. Specifically, if ORS is required to present its witness at the August 2, 2021, hearing as currently scheduled, ORS and its witnesses will not have the opportunity to address, rebut, or comment on any findings that may be presented by London Economics at that time. This is so simply because the findings of London Economics will not be known or subject to review by the

parties 21 days later when the report is filed with the Commission on August 23, 2021. And, under the currently approved schedule, ORS's witnesses will not be able to comment or opine on the London Economics report at the hearing scheduled for September 16-17, 2021, inasmuch as the Commission has stated the purpose of this hearing is for parties only to cross-examine and for the Commissioners to ask questions of London Economics. Since ORS will not be afforded the basic opportunity to respond or present evidence through its witnesses on any issues that may be offered by London Economics, ORS cannot be heard in a meaningful or timely way. *See* S.C. Code Ann. § 1-23-320(E) ("Opportunity must be afforded all parties to respond and present evidence and argument on *all* issues involved.") (emphasis added); *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.") *citing* S.C. Const. art. 1, § 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard.").

17. Second, even if the Commission requires ORS to present its witnesses on August 2, 2021, and subsequently allows ORS to recall its witnesses at the September 16-17, 2021, hearing in order to address, rebut, or comment on London Economics' report, doing so would not serve the interests of quasi-judicial and administrative economy. Under these circumstances, ORS, and ultimately South Carolina ratepayers, would be required to incur additional cost and devote further time and resources, which could otherwise be avoided, in order to offer its witnesses again at a second hearing.

18. Finally, the Commission's regulations provide that ORS typically presents its case following the presentation of witnesses and evidence by all other parties to a proceeding. 10 S.C.

Code Ann. Regs. 103-842.B. Allowing London Economics to present and provide testimony regarding its report after ORS has presented its case in chief therefore would be contrary to the Commission's regulations and its well-established procedures regarding the order of the parties.

19. For these reasons, ORS submits that requiring it to present its witnesses at the hearing on August 2, 2021, would violate its procedural due process rights, would unduly impair quasi-judicial and administrative economy, and would be contrary to the Commission's regulations.

20. In order to resolve these issues in a reasonable and logical manner, ORS respectfully submits that the Commission should grant leave for ORS to present the direct testimony of its witnesses, Brian Horii and Gretchen C. Pool, during the hearing scheduled for September 16-17, 2021, and following any presentation of the London Economics' report and related testimony as opposed to the hearing scheduled for August 2, 2021. Doing so would protect ORS's procedural due process rights and allow ORS to address any findings of London Economics at the same time ORS presents its case in chief and evidence in support of the Stipulation. This also would allow the hearings in the above-captioned dockets to proceed in a more orderly and efficient manner and obviate the need for ORS to present its witnesses at two separate hearings, thus protecting the interests of quasi-judicial and administrative economy as well as the limited time and resources of the parties and the Commission. Finally, the requested procedure would allow ORS to present its witnesses last, as contemplated by 10 S.C. Code Ann. Regs. 103-842.B.

21. Given that the hearing on these matters currently is scheduled to begin on August 2, 2021, ORS further requests that the Commission consider this request on an expedited basis and at the outset of the hearing scheduled to begin on August 2, 2021, at 10:00 a.m.

WHEREFORE, for the above-stated reasons and for such other reasons and arguments that may be presented at any oral argument on this request, ORS respectfully requests that the Commission consider this Motion on an expedited basis and issue an order granting ORS leave to present the direct testimony of its witnesses, Brian Horii and Gretchen C. Pool, during the hearing scheduled for September 16-17, 2021, and following any presentation of the London Economics' report and related testimony as opposed to the hearing scheduled for August 2, 2021. ORS further requests that the Commission grant such other relief as is just and proper.

*s/Benjamin P. Mustian*

Andrew M. Bateman, Esquire

Benjamin P. Mustian, Esquire

Alexander W. Knowles, Esquire

**OFFICE OF REGULATORY STAFF**

1401 Main Street, Suite 900

Columbia, South Carolina 29201

Phone: (803) 737-8440

Fax: (803) 737-0801

E-mail: abateman@ors.sc.gov

E-mail: bmustian@ors.sc.gov

E-mail: aknowles@ors.sc.gov

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Columbia, South Carolina